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 6 RSA Data Security, Inc.

FILED
 Feb 27 1 50 PM '95
 RICHARD L. WILKINS
 CLERK
 U.S. DISTRICT COURT
 NO. DIST. OF CAL. S.J.

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 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

11
 12 ROGER SCHLAFLY,) CASE NO.: C 94 20512 SW (PVT)
 13 Plaintiff,)
 14 vs.) DEFENDANT RSA DATA SECURITY,
 15 PUBLIC KEY PARTNERS and RSA DATA) INC.'S ANSWER TO AMENDED
 16 SECURITY, INC.,) COMPLAINT
 17 Defendants.)
 18

19 Defendant RSA Data Security, Inc., ("RSA") answers
 20 plaintiff Roger Schlafly's ("Plaintiff") Amended Complaint as
 21 follows:

22 1. Responding to paragraph 1, RSA admits that it does
 23 business at 100 Marine Parkway, Redwood City, CA 94065. Except
 24 as specifically admitted, RSA denies each and every allegation
 25 set forth in paragraph 1.

26 2. Responding to paragraphs 2 and 3, RSA lacks sufficient
 27 information and belief on which to admit or deny the allegations
 28 of said paragraphs, and, on that basis, denies the allegations of

C-SW

1 said paragraphs.

2 3. Responding to paragraph 4, RSA admits the allegations
3 of said paragraph.

4 4. Responding to paragraph 5, RSA admits that under
5 general federal law this Court has subject matter jurisdiction
6 over claims arising under antitrust law (Title 15, Sherman
7 Antitrust Act) and under patent law (Title 35) and under 28
8 U.S.C. Sections 1331, 1337(a), 1338(a), 1338(b), 2201 and 2202.
9 Except as specifically admitted above, RSA denies each and every
10 allegation contained in paragraph 5.

11 5. Responding to paragraph 6, RSA admits that defendant
12 PKP ("PKP") controls the following U.S. patents and their foreign
13 equivalents: Diffie-Hellman 4,200,770; Hellman-Merkle 4,218,582;
14 RSA 4,405,829; Hellman-Pohlig 4,424,414; and Schnorr 4,995,082.
15 Except as specifically admitted, RSA lacks sufficient information
16 and belief on which to admit or deny the remaining allegations of
17 said paragraph, and, on that basis, denies the remaining allega-
18 tions of said paragraph.

19 6. Responding to paragraph 7, RSA lacks sufficient
20 information and belief on which to admit or deny the allegations
21 of said paragraph, and, on that basis, denies the allegations of
22 said paragraph.

23 7. Responding to paragraph 8, RSA denies each and every
24 allegation contained in said paragraph.

25 8. Responding to paragraphs 9 through 21, the Court
26 dismissed said paragraphs from the Amended Complaint.

27 9. Responding to paragraph 22, RSA admits that a copy of
28 a paper by Whitfield Diffie and Martin E. Hellman is attached as

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1 Exhibit T to the Amended Complaint. Such document speaks for
2 itself. Except as specifically admitted above, RSA lacks
3 sufficient information and belief on which to admit or deny the
4 remaining allegations of said paragraph, and, on that basis,
5 denies the remaining allegations of said paragraph.

6 10. Responding to paragraph 23, RSA admits that a copy of
7 another paper by Diffie and Hellman is attached as Exhibit U to
8 the Amended Complaint. Such document speaks for itself. Except
9 as specifically admitted above, RSA lacks sufficient information
10 and belief on which to admit or deny the remaining allegations of
11 said paragraph, and, on that basis, denies the remaining allega-
12 tions of said paragraph.

13 11. Responding to paragraph 24, RSA admits that a copy of
14 a paper by Diffie is attached as Exhibit V to the Amended
15 Complaint. Such document speaks for itself. Except as
16 specifically admitted above, RSA lacks sufficient information and
17 belief on which to admit or deny the remaining allegations of
18 said paragraph, and, on that basis, denies the remaining allega-
19 tions of said paragraph.

20 12. Responding to paragraph 25, RSA lacks sufficient
21 information and belief on which to admit or deny the allegations
22 of said paragraph, and, on that basis, denies the allegations of
23 said paragraph.

24 13. Responding to paragraph 26, RSA denies each and every
25 allegation contained in said paragraph.

26 14. Responding to paragraph 27, RSA lacks sufficient
27 information and belief on which to admit or deny the allegations
28 of said paragraph, and, on that basis, denies the allegations of

1 said paragraph.

2 15. Responding to paragraph 28, RSA denies each and every
3 allegation contained in said paragraph.

4 16. Responding to paragraph 29, RSA admits that Cylink has
5 filed a complaint alleging on information and belief that the RSA
6 patent is invalid and that such complaint is attached as Exhibit
7 X to the Amended Complaint. Such document speaks for itself.
8 Except as specifically admitted above, RSA lacks sufficient
9 information and belief on which to admit or deny the remaining
10 allegations of said paragraph, and, on that basis, denies the
11 remaining allegations of said paragraph.

12 17. Responding to paragraphs 30, 31 and 32, RSA denies
13 each and every allegation contained in said paragraphs.

14 18. Responding to paragraph 33, RSA admits that a letter
15 purporting to be from PKP is attached as Exhibit R to the Amended
16 Complaint and contains the quote set forth in said paragraph.
17 Such document speaks for itself. Except as specifically admitted
18 above, RSA denies each and every allegation contained in said
19 paragraph.

20 19. Responding to paragraph 34, RSA admits that a letter
21 purporting to be from PKP is attached as Exhibit S to the Amended
22 Complaint. Such document speaks for itself. Except as
23 specifically admitted above, RSA denies each and every allegation
24 contained in said paragraph.

25 20. Responding to paragraphs 35 through 40, RSA lacks
26 sufficient information and belief on which to admit or deny the
27 allegations of said paragraphs, and, on that basis, denies the
28 allegations of said paragraphs.

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1 21. Responding to paragraph 41, RSA denies each and every
2 allegation contained in said paragraph.

3 22. Responding to paragraph 42, RSA admits that a letter
4 from D. James Bidzos is attached as Exhibit J to the Amended
5 Complaint. Such document speaks for itself. Except as specifi-
6 cally admitted above, RSA denies each and every allegation
7 contained in said paragraph.

8 23. Responding to paragraph 43, RSA denies each and every
9 allegation contained in said paragraph.

10 24. Responding to paragraph 44, RSA admits that public
11 notices appear at the listed Federal Register citations and are
12 attached as Exhibit L and M to the Amended Complaint, and that a
13 copy of the DSA patent is attached as Exhibit N. Such documents
14 speak for themselves. Except as specifically admitted above, RSA
15 denies each and every allegation contained in said paragraph.

16 25. Responding to paragraph 45, RSA admits that a letter
17 purporting to be from PKP to NIST is attached as Exhibit O to the
18 Amended Complaint. Such document speaks for itself. Except as
19 specifically admitted above, RSA lacks sufficient information and
20 belief on which to admit or deny the remaining allegations of
21 said paragraph, and, on that basis, denies the remaining allega-
22 tions of said paragraph.

23 26. Responding to paragraph 46, RSA admits that a copy of
24 letter purporting to be from PKP is attached as Exhibit H to the
25 Amended Complaint and that it contains the sentence quoted in
26 said paragraph. Such document speaks for itself. Except as
27 specifically admitted above, RSA denies each and every allegation
28 contained in said paragraph.

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1 27. Responding to paragraph 47, RSA lacks sufficient
2 information and belief on which to admit or deny the allegations
3 of said paragraph, and, on that basis, denies the allegations of
4 said paragraph.

5 28. Responding to paragraph 48, RSA admits that a copy of
6 Ciphertext is attached as Exhibit AB to the Amended Complaint and
7 that it contains the sentence quoted in said paragraph. Such
8 document speaks for itself.

9 29. Responding to paragraph 49, RSA denies each and every
10 allegation contained in said paragraph.

11 30. Responding to paragraph 50, RSA denies each and every
12 allegation contained in said paragraph.

13 31. Responding to paragraphs 51 and 52, RSA lacks
14 sufficient information and belief on which to admit or deny the
15 allegations of said paragraphs, and, on that basis, denies the
16 allegations of said paragraphs.

17 32. Responding to paragraphs 53 and 54, RSA denies each
18 and every allegation contained in said paragraphs.

19 33. Responding to paragraphs 55 through 73, the Court
20 dismissed said paragraphs from the Amended Complaint.

21 34. Responding to paragraphs 74 and 80, RSA denies each
22 and every allegation contained in said paragraphs.

23 35. Responding to paragraph 81, RSA admits that it is
24 engaged in interstate commerce and that its products are sold
25 nationwide. Except as specifically admitted above, RSA denies
26 each and every allegation contained in said paragraph.

27 36. Responding to paragraph 82, RSA admits that a copy of
28 a letter from D. James Bidzos is attached as Exhibit AD to the

1 Amended Complaint and that it contains the sentence quoted in
2 said paragraph. Such document speaks for itself.

3 37. Responding to paragraph 83, RSA admits that Cylink
4 controls Caro-Kann Corp., a partner in PKP, as a wholly-owned
5 subsidiary with no employees, sales, or physical assets. RSA
6 further admits that the Hellman patents were originally assigned
7 to Stanford and that the RSA patent was originally assigned to
8 MIT and exclusively licensed to RSA. RSA further admits that the
9 Hellman patents, the RSA patent and the Schnorr patent are under
10 the exclusive licensing control of PKP. RSA denies that PKP has
11 pooled patents in an attempt to monopolize public key
12 technologies and that the Hellman patents were originally
13 exclusively licensed to Cylink. Except as expressly admitted or
14 denied above, RSA lacks sufficient information and belief on
15 which to admit or deny the remaining allegations of said
16 paragraph, and, on that basis, denies the remaining allegations
17 of said paragraph.

18 38. Responding to paragraphs 84 through 91, RSA denies
19 each and every allegation contained in said paragraphs.

20 39. Responding to paragraph 92, RSA admits that a copy of
21 the text on a poster is attached as Exhibit Z to the Amended
22 Complaint and that it contains the sentence quoted in said
23 paragraph. Such document speaks for itself. Except as
24 specifically admitted above, RSA denies each and every allegation
25 contained in said paragraph.

26 40. Responding to paragraph 93, RSA admits that a copy of
27 picture of D. James Bidzos wearing a T-shirt is attached as
28 Exhibit AA to the Amended Complaint. Such document speaks for

1 itself.

2 41. Responding to paragraph 94, RSA lacks sufficient
3 information and belief on which to admit or deny whether
4 Plaintiff has been developing software for the Fortezza (aka
5 Tessera) card, a device which purports to have Clipper chip
6 technology, and on that basis, denies such allegations. Except
7 as expressly denied on information and belief, RSA denies each
8 and every allegation contained in said paragraph.

9 42. Responding to paragraphs 95 through 99, RSA denies
10 each and every allegation contained in said paragraphs.

11
12 AFFIRMATIVE DEFENSES

13 In further answer to Plaintiff's Amended Complaint and as
14 affirmative defenses thereto, RSA alleges that:

15 FIRST AFFIRMATIVE DEFENSE

16 43. Plaintiff has failed to state a claim on which relief
17 can be granted.

18 SECOND AFFIRMATIVE DEFENSE

19 44. Any damages or injuries suffered by Plaintiff were
20 occasioned by his own wrongful actions.

21 THIRD AFFIRMATIVE DEFENSE

22 45. Plaintiff's claims are barred by the applicable
23 statutes of limitations.

24 FOURTH AFFIRMATIVE DEFENSE

25 46. Plaintiff's claims are barred by waiver and/or
26 estoppel.

27 FIFTH AFFIRMATIVE DEFENSE

28 47. Plaintiff's claims are barred by unclean hands.

SIXTH AFFIRMATIVE DEFENSE

48. Plaintiff's claims are barred by laches.

SEVENTH AFFIRMATIVE DEFENSE

49. Plaintiff's claims are barred by fraud.

EIGHTH AFFIRMATIVE DEFENSE

50. Plaintiff's claims are void, wrongful, without right, illegal, and/or unlawful.

NINTH AFFIRMATIVE DEFENSE

51. Plaintiff's damages, if any, were caused in whole or in part by person or persons other than RSA.

TENTH AFFIRMATIVE DEFENSE

52. The MIT Patent was validly issued and remains valid and enforceable.

ELEVENTH AFFIRMATIVE DEFENSE

53. At all times relevant hereto, RSA's conduct and statements were in good faith, engaged in without malice, and were privileged and/or justified.

TWELFTH AFFIRMATIVE DEFENSE

54. This Court lacks subject matter jurisdiction, as Plaintiff has not alleged facts that would give rise to such jurisdiction.

THIRTEENTH AFFIRMATIVE DEFENSE

55. Some or all of Plaintiff's claims lack necessary and indispensable parties as required by Fed. R. Civ. P. 19, and so there is a misjoinder or nonjoinder of parties.

FOURTEENTH AFFIRMATIVE DEFENSE

56. Plaintiff lacks standing to assert some or all of the claims set forth in the Amended Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

57. Plaintiff is barred from any recovery on the Amended Complaint because he failed to make reasonable efforts to mitigate his damages although he had a reasonable opportunity to do so.

SIXTEENTH AFFIRMATIVE DEFENSE

58. To the extent that RSA has monopoly power in the relevant market, which is denied, such power was unavoidably thrust upon RSA as a result of, among other things, business acumen, superior products, economic or technical skill and efficiency, and natural advantages stemming from RSA's intellectual property rights.

SEVENTEENTH AFFIRMATIVE DEFENSE

59. RSA is exempt from antitrust liability for its conduct by virtue of the patent laws (Title 35).

EIGHTEENTH AFFIRMATIVE DEFENSE

60. Any discrimination in prices was lawful under the antitrust laws in that any such discrimination was the result of a good faith effort to meet competition.

NINETEENTH AFFIRMATIVE DEFENSE

61. Any discrimination in prices was lawful under the antitrust laws in that any such discrimination was the result of due allowance in the costs involved with respect to particular purchasers.

TWENTIETH AFFIRMATIVE DEFENSE

62. Any discrimination in prices was lawful under the antitrust laws in that any such discrimination was the result of changing conditions in the marketability of the licenses or

1 products involved.

2 PRAYER FOR RELIEF


3 WHEREFORE, Defendant RSA prays for:

- 4 1. Dismissal of Plaintiff's Amended Complaint in its
5 entirety with prejudice, judgment in favor of RSA and against
6 Plaintiff, and denial of all relief requested in the Amended
7 Complaint;
- 8 2. Defendant's reasonable attorney fees;
- 9 3. Defendant's costs of suit; and
- 10 4. Such other further relief as this Court deems just and
11 proper.

12 Dated: February 27, 1995

TOMLINSON ZISKO MOROSOLI & MASER

13
14 By:


Thomas E. Moore III
Attorneys for Defendant RSA
Data Security, Inc.

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DEMAND FOR JURY TRIAL

Defendant RSA Data Security, Inc. hereby demands a jury trial in this action.

Dated: February 27, 1995

TOMLINSON ZISKO MOROSOLI & MASER

By:



Thomas E. Moore III

Attorneys for Defendant RSA
Data Security, Inc.

TOMLINSON, ZISKO, MOROSOLI & MASER

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PROOF OF SERVICE U.S. MAIL
SCHLAFLY V. PUBIC KEY PARTNERS AND RSA DATA SECURITY, INC.
UNITED STATES DISTRICT COURT CASE NO.: C 94 20512 PVT

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 Page Mill Road, Second Floor, Palo Alto, California 94306.

On February 27, 1995, I served the foregoing documents described as:

DEFENDANT RSA DATA SECURITY, INC.'S ANSWER TO AMENDED COMPLAINT

on the interested parties in this action addressed as follows:

Roger Schlafly
P. O. Box 1680
Soquel, CA 95073

Thomas R. Hogan
60 South Market Street, Suite 1125
San Jose, California 95113-2332

[X] BY MAIL

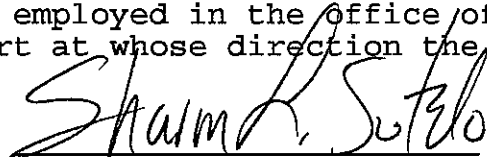
☐ I deposited such envelope in the mail at Palo Alto, California. The envelope was mailed with postage thereon fully prepaid.

☒ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Palo Alto, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on February 27, 1995, at Palo Alto, California.

☐ **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.


Sharon L. Sotelo